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Paper 3

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OFFICE OF PETITIONS

In re application of
Hipp, et al.
Application No. 09/620,108
Filed: 20 July, 2000
Attorney Docket No.: 067856.0110

ON PETITION

This is a decision on the petition filed (with the applicable fee) on 27 September, 2000, under the provisions of 37 C.F.R. §1.53 (e)¹ to accord a filing date of 20 July, 2000, to pages 35 and 37 of the specification.

The Office regrets the delay in addressing this matter.

The petition is **DISMISSED**.

The record indicates that:

- the instant application was filed on 20 July, 2000, and pages 35 and 37 of the specification were not included with other items of the application;
- a Notice of Omitted Items was mailed on 11 September, 2000, stating that pages 35 and 37 of the specification were not filed contemporaneously with the application;
- the Notice also set forth therein the non-extendable two- (2-) month deadline within which Applicant might petition for incorporation of the omitted items into the application with the concurrent effect of accepting that petition date as the new filing date of the application;
- the instant petition was filed in response via Express Mail on 27 September, 2000, including therewith pages 35 and 37 of the specification.

¹ The regulation at 37 C.F.R. §1.53(e) provide

§ 1.53 Application number, filing date, and completion of application. ***

(e) *Failure to meet filing date requirements.*

(1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawings, must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(d). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

(3) If an applicant is notified of a filing error pursuant to paragraph (e)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to this paragraph, proceedings in the application will be considered terminated. Where proceedings in an application are terminated pursuant to this paragraph, the application may be disposed of, and any filing fees, less the handling fee set forth in § 1.21(m), will be refunded.

Petitioner submits with the petition, *inter alia*:

- Exhibit B, described as a true copy of pages 35 and 37 of the specification for the instant application;
- Exhibit C, described as a true copy of the stamped postcard receipt (dated 20 July, 2000) for the instant application;
- Exhibit D, described as a true copy of the Express Mail receipt (dated 20 July, 2000) for the instant application;
- Exhibit E, described as a true copy of the Certificate of Express Mail for the instant application;
- Exhibit F, described as a true copy of the transmittal letter for the instant application;
- Exhibit G, described as a true copy of the materials filed in the instant application.

Notably:

- although the application transmittal letter submitted on 20 July, 2000, indicates that "69 total pages" of specification, claims and abstract accompanied the application,
- the copy of the postcard receipt card stamped as received by the Office on 20 July, 2000, and submitted by Petitioner with the petition does not list any statement of the number of pages of specification, claims and abstract submitted with the application.

Therefore, contrary to the assertion at page 3 of the petition, the stamped receipt card does not confirm that the Office acknowledged receipt of pages 35 and 37 of the application. Rather, the stamped receipt card confirms that the Office acknowledged receipt of an application containing an unstated number pages.

A return postcard receipt serves as *prima facie* evidence that the identified papers were or were not received by the Office. MPEP §503.²

While the Office does not doubt that the specification and claim(s) were prepared for submittal on or about 20 July, 2000, the mere fact that they were prepared and ready for mailing at Counsel's office does not necessarily mean that they were included with the application papers filed with the Office on 20 July, 2000.³

MPEP § 503 provides in pertinent part as follows.

[T]he postcard receipt will not serve as *prima facie* evidence of receipt of papers which are not adequately itemized...Instead, each separate component, e.g., the number of pages of specification, number of claims (nonprovisional applications), number of sheets of drawings, cover sheet (provisional applications), etc. should be itemized on the postcard receipt...A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO

MPEP § 513 provides in pertinent part as follows.

* * *

Where there is a dispute as to the contents of correspondence submitted to the Office (e.g., an applicant asserts that three sheets of drawings were submitted under 37 C.F.R. §1.10 with an application, but the Office records indicate receipt of only two sheets of drawings with the application), an applicant may not rely upon the provisions of 37 C.F.R. §1.10(e) to establish what document(s) and/or fee(s) were filed in the Office with such correspondence. Rather, where the records of the Office (e.g., the file of the application) contain any document(s) or

Accordingly, the Office cannot grant a 20 July, 2000, filing date for pages 35 and 37 of the specification of the instant application and the petition is **dismissed**.

To avoid delays in the examination of the application, an amendment renumbering the pages in consecutive order and canceling the incomplete sentences on pages 35 and 36 should be filed prior to the first Office action.

The application is being returned to Technology Center 2830 with the presently accorded filing date of 20 July, 2000, for examination in due course.

Telephone inquiries concerning this matter should be directed to John J. Gillon, Jr., Attorney, Office of Petitions, at (703) 305-9199.

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fees) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPFP §503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.